

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 ISO-00 CIAE-00 COME-00 DODE-00 DOTE-00

EB-11 FMC-04 INR-11 NSAE-00 RSC-01 CG-00 COA-02

DLOS-07 SWF-02 AID-20 CEA-02 EA-11 FRB-03 IO-14

NEA-14 OPIC-12 SP-03 TRSE-00 CIEP-03 LAB-06 SIL-01

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FM SECSTATE WASHDC

TO USMISSION OECD PARIS PRIORITY

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E.O. 11652:N/A

TAGS: EWWT, OECD

SUBJECT: COMPATIBILITY OF UN CONVENTION ON A CODE OF
CONDUCT FOR LINER CONFERENCES AND OECD CODE OF LIBERALI-
ZATION

REF: A) OECD PARIS 21884, PARA. 1 B) DAF/MTC/74.33

1. DEPARTMENT REGRETS LATENESS OF THIS RESPONSE. SEPTTEL
COVERS OUR COMMENTS ON IC SECRETARIAT DRAFT REPORT
(DAF/INV/74.46). ANOTHER SEPTTEL TO BE SENT SEPT. 23 WILL
COVER DAF/MTC/74.31. WE HAD FELT SUBMISSIONS FROM
GOVERNMENTS WERE REQUESTED, BUT NOT REQUIRED. IN VIEW
OF U.S. RESERVATION ON MARITIME FREIGHTS PROVISIONS IN
OECD LIBERALIZATION CODE (WHICH IS EMPHASIZED IN IC
SECRETARIAT'S DRAFT REPORT ON COMPATIBILITY OF OECD
AND LINER CONFERENCE CODES), WE BELIEVE U.S. SHOULD TAKE
LOW-KEYED APPROACH AND RELY ON OTHER LINER CODE OPPON-
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ENTS SUCH AS THE UK AND SCANS TO CARRY BALL ON INCOMPATI-

BILITY EXERCISE. IN ADDITION, THESE INCOMPATIBILITY PROBLEMS AS WELL AS GENERAL PROBLEMS U.S. HAS WITH THE CODE, WE THOUGHT COULD BE COVERED IN COURSE OF OCTOBER 23-24 MTC MEETING.

2. NONETHELESS, IF DEEMED ADVISABLE TO BE ON THE RECORD WITH A SUBMISSION TO THE SECRETARIAT PRECEDING SEPTEMBER IC AND OCTOBER MTC MEETINGS, YOU SHOULD PROVIDE STATEMENTS ALONG LINES FOLLOWING BELOW.

3. REGARDING DAF/MTC/74.33, WE PREFER NOT TO ANSWER QUESTION 1 AS FOCUS OF STUDY AS WE HAVE MAINTAINED IN PREVIOUS CABLES THIS SUBJECT SHOULD BE ON THE LINER CODE RELATIONSHIP. PRESENT LINER CONFERENCE SYSTEM, AS DRAFT SECRETARIAT REPORT INDICATES FOR MOST PART DOES NOT INVOLVE GOVERNMENT ACTION AND THEREFORE MAY NOT BE GOVERNED AT ALL BY LIBERALIZATION CODE (WE REALLY DO NOT WANT TO COMMIT OURSELVES VERY MUCH ON THIS POINT ONE WAY OR THE OTHER); AT ANY RATE RAISING SUBJECT OBFUSCATES CRITICAL ISSUES PRESENTED BY LINER CONFERENCE CODE.

4. WITH RESPECT TO OTHER QUESTIONS:

A)2-ARTICLE 47 OF THE LINER CODE CLEARLY CONTEMPLATES THAT EACH PARTY MUST TAKE THOSE STEPS NECESSARY TO MAKE ALL CODE PROVISIONS OTHER THAN THOSE TO WHICH RESERVED, THE APPLICABLE LAW IN ITS TERRITORY. IN THE USUAL CASE THIS WOULD INVOLVE LEGISLATIVE ACTION TO ACCEPT THE TREATY (RATIFICATION OR ACCESSION) AS WELL AS ENACTMENT OF IMPLEMENTING LEGISLATION. FOR THE UNITED STATES IMPLEMENTING LEGISLATION WOULD REQUIRE REPEAL OF BASIC PRINCIPLES WHICH HAVE GOVERNED SHIPPING IN THIS COUNTRY FOR MORE THAN 50 YEARS. THIS WOULD INCLUDE, INTER ALIA, ELIMINATION OF THE OPEN CONFERENCE SYSTEM AND AN ACROSS-THE-BOARD ESTABLISHMENT OF CARGO ALLOCATION FOR ALL COMMERCIAL CARGOES ON A 40-40-20 FORMULA BASED ON THE NATIONALITY OF SHIPPING LINES CONCERNED. IT WOULD ALSO REQUIRE SUBSTANTIAL REVISION OF EXISTING U.S. SHIPPING LAW ON, INTER ALIA, FREIGHT RATES, AND SETTLEMENT OF DISPUTES.

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B) 3 - FOR US TRADES, AS INDICATED ABOVE, OPEN CONFERENCES, WOULD BE ELIMINATED AND REPLACED BY CLOSED CONFERENCES, AT LEAST IN RESPECT OF THIRD-COUNTRY CARRIERS. CONFERENCES WOULD APPEAR TO BE OPEN ONLY INsofar AS NATIONAL SHIPPING LINES OF THE TRADE INVOLVED WERE CONCERNED. IT COULD BE ANTICIPATED THAT US CARRIERS, WHERE THEY WOULD ACT AS THIRD COUNTRY SHIPPING LINES, WOULD BE REFUSED ADMISSION TO THE RESPECTIVE CONFERENCE IN

MANY CASES.

C) 4 - IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 2 OF THE LINER CONFERENCE CODE, ANY VARIATION FROM THE CARGO SHARING FORMULA REQUIRES MUTUAL AGREEMENT. WHILE THE DRAFTING OF ARTICLE 2 IS UNCLEAR AND THERE IS LITTLE LEGISLATIVE HISTORY, "MUTUAL AGREEMENT" WOULD APPEAR TO REQUIRE AT LEAST UNANIMOUS AGREEMENT BETWEEN THE NATIONAL SHIPPING LINES OF THE CONFERENCE IN THE TRADE CONCERNED. THEREFORE, IT WOULD APPEAR VARIATIONS IN THE CODE FORMULA WOULD ONLY TAKE PLACE WHEN NO NATIONAL SHIPPING LINE OF THE TRADE INVOLVED INSISTED ON ITS QUOTA UNDER THE CODE.

D) 5 - FOR MORE THAN 50 YEARS THE UNITED STATES HAS UPHELD THE PRINCIPLE OF OPEN CONFERENCES.

E) 6 - WHILE THE LANGUAGE OF ARTICLE 2 IS NOT PRECISE, WE BELIEVE ITS PRACTICAL EFFECT IS, ESSENTIALLY, TO ESTABLISH A 40-40-20 FORMULA.

F) 7 - THIS QUESTION IS UNCLEAR. WE DO NOT KNOW WHETHER IT REFERS TO ALL CARGO OR JUST TO COMMERCIAL CARGOES.

G) 8 - THE U.S. IS UNABLE TO REPLY TO THIS QUESTION AT THIS TIME. THE LANGUAGE OF THE ARTICLE IS UNCLEAR AND THERE IS LITTLE LEGISLATIVE HISTORY. THE MATTER IS CURRENTLY UNDER STUDY.

H) 9 - WE BELIEVE SUBSTANTIAL RESTRICTIONS WOULD BE PLACED ON RESIDENTS IN OECD MEMBER COUNTRIES TO AVAIL THEMSELVES OF SERVICES IN CONNECTION WITH INTERNATIONAL MARITIME TRANSPORT IN ACCORDANCE WITH THE CLOSED CONFERENCE AND CARGO SHARING PROVISIONS OF THE LIMITED OFFICIAL USE

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CODE.

I) 10 - THE CONVENTION DOES NOT REGULATE OUTSIDERS. ONE OF THE RESOLUTIONS ADOPTED BY THE CONFERENCE WOULD APPEAR TO CALL FOR COMPETITION BY OUTSIDERS. HOWEVER, A CONCLUDING STATEMENT MADE ON BEHALF OF THE GROUP OF 77 WOULD INDICATE THE POSSIBILITY OF SEVERE RESTRICTIONS ON THE ROLE OF OUTSIDERS.

J) 11 - BECAUSE OF THE COMPLEXITY OF CODE RULES, IT IS OUR BELIEF THE CODE WILL LEAD TO GREATER GOVERNMENT REGULATIONS AND CONFLICT AS EFFORTS ARE MADE TO INTERPRET THE CODE AND AS INCONSISTENT POSITIONS ARE TAKEN BY GOVERNMENTS AT EITHER END OF A TRADE. KISSINGER

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